

Issued March 5, 1914.

F. & D. Nos. 3878, 3980, 4026, 4415, 4590, 4617, 4618, 4667.

I. S. Nos. 17020-c, 5526-d, 17080-c, 17081-c, 14942-d, 3252-d, 880-d, 881-d, 883-d, 19021-d.

## United States Department of Agriculture,

OFFICE OF THE SECRETARY.

---

### NOTICE OF JUDGMENT NO. 2732.

(Given pursuant to section 4 of the Food and Drugs Act.)

---

**U. S. v. Melville Liebenthal and Sylvester Liebenthal (Liebenthal Bros. & Co.).** Plea of *nolo contendere* entered. Fine, \$50 on each of first, second, and third counts of information; \$40 on each of counts 6 to 15, inclusive, and costs. No penalty adjudged upon fourth and fifth counts of information.

---

**ADULTERATION AND MISBRANDING OF WILD CHERRY BRACER; MISBRANDING OF FERNET-LENORA BITTERS; ALLEGED MISBRANDING OF CATAWBA GRAPE JUICE AND CONCORD GRAPE JUICE; MISBRANDING OF COGNAC TYPE BRANDY; MISBRANDING OF DAMIANA; ADULTERATION AND MISBRANDING OF CORDIALIZED PEACH BRANDY; ADULTERATION AND MISBRANDING OF CORDIALIZED APRICOT BRANDY; ADULTERATION AND MISBRANDING OF CORDIALIZED FIG BRANDY; ADULTERATION AND MISBRANDING OF WILD CHERRY AND PEPSIN CORDIAL.**

On April 4, 1913, the United States Attorney for the Northern District of Ohio, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district an information in 15 counts against Melville Liebenthal and Sylvester Liebenthal, partners, doing business under the firm name and style of Liebenthal Bros. & Co., Cleveland, Ohio, alleging shipment by said defendants, in violation of the Food and Drugs Act—

(1) On or about March 1, 1911, from the State of Ohio into the State of New York, of a quantity of bracer, wild cherry flavor, which was adulterated and misbranded. This product was labeled: "L Lenora Bracer Wild Cherry Flavor Appetizing and Satisfying. A compound artificial flavor containing harmless color and less than  $\frac{1}{10}$  of 1 per cent of benzoate of soda. Touching the spot Bracer Wild Cherry Flavor Straight or Mixed. Cherry Bracer as per T. D. 1645 Internal Revenue Department. The contents of this container re-

quires no revenue stamp." Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results:

Solids (grams per 100 cc)-----	31.26
Nonsugar solids (grams per 100 cc)-----	3.58
Total acids (cc N/10 alkali per 100 cc)-----	250.0
Alcohol (per cent by volume)-----	9.75
Sodium benzoate (grams per 100 cc)-----	.063
Reducing sugar as invert before inversion (grams per 100 cc)-----	8.17
Sucrose by copper (grams per 100 cc)-----	19.51
Ash (grams per 100 cc)-----	.155
Esters as ethyl acetate (grams per 100 cc)-----	.747
Tartaric acid (grams per 100 cc)-----	.75
Color, reactions of saffranine.	
Arsenic, none detected.	

Adulteration of the product was alleged in the first count of the information for the reason that a substance, to wit, an imitation cherry cordial, artificially colored and flavored and prepared from pomace wine as a base, had been mixed and packed with the article so as to reduce, lower, and injuriously affect its quality and strength, and for the further reason that a substance, to wit, an imitation cherry cordial, artificially colored and flavored and prepared from pomace wine as a base, had been substituted wholly or in part for the article which, from the label and brand thereon, purported to be a liquid of genuine cherry flavor. Misbranding of the product was alleged in the second count of the information for the reasons: First, that the statement borne on the label, to wit, "Wild Cherry Flavor," was false and misleading, in that it conveyed the impression that the article was a cherry product, whereas in fact it was an imitation cherry cordial, artificially colored and flavored, prepared from pomace wine as a base; second, that the article was an imitation of and offered for sale under the distinctive name of another article, to wit, "Wild Cherry Flavor Compound;" and third, that the article was labeled and branded so as to deceive and mislead the purchaser into the belief that it was a genuine cherry product, whereas in fact it was an imitation cherry product, artificially colored and flavored.

(2) On or about September 21, 1911, from the State of Ohio into the State of Pennsylvania, of a quantity of Fernet-Lenora Bitters which was misbranded. The product was labeled: (On the main label) "Fernet-Lenora Bitters Extraordinary Fernet-Lenora is produced mainly from aromatic herbs and roots. It stimulates the appetite, aids digestion and fortifies the stomach against ill effects. Fernet Lenora is an excellent remedy for Indigestion, Malaria, Sea-Sickness and Anemia. It can be taken diluted with water, liquor, coffee or other liquids. The taste and aroma are pleasing and when mixed with Vermouth or Seltzer water it is a delicious beverage. This preparation is surprisingly efficient." (Same label in Italian) (On the lower label) "Fernet-Lenora. Alcohol thirty three per cent.

Contains harmless color. In producing Fernet-Lenora we have perfected a Bitters of unsurpassed quality and delicious taste, and have only attained an enviable reputation through its fine aroma, mellowness and rich flavor. The excellent qualities of Fernet-Lenora will always be maintained. Fernet-Lenora." Analysis of a sample of this product by the said Bureau of Chemistry showed the following results: Alcohol, per cent by volume, 40.10; methyl alcohol, none; solids, 3.09 per cent; reducing sugars as invert before inversion, 0.49 per cent; reducing sugars as invert after inversion, 1.75 per cent; coal-tar color, none; alkaloids, none found. Misbranding of the product was alleged in the third count of the information for the reason that the name "Fernet" and that portion of the label in the Italian language was such as to mislead the purchaser into the belief that the product was of foreign manufacture and origin, whereas the same was manufactured in the United States. Misbranding was alleged for the further reason that the principal label upon the product failed to bear a statement of the quantity or proportion of alcohol contained therein, said product showing about 40 per cent by volume of alcohol.

(3) On or about June 24, 1911, from the State of Ohio into the State of New York, of a quantity of catawba unfermented grape juice which was alleged to have been misbranded. This product was labeled: "Lake Shore Brand Ohio Catawba Unfermented non-alcoholic Grape Juice Liebenthal Bros. & Co. Cleveland, Ohio. Preserved with sulphur dioxide ( $\text{SO}_2$ ) being about .035 of one per cent due to the burning of sulphur in the storage casks. Vintage 1910." Misbranding of the product was alleged in the fourth count of the information for the reason that the label borne on the product was misleading, in that it would deceive the purchaser into the belief that it had been manufactured by Liebenthal Bros. & Co. at Cleveland, Ohio, whereas, in truth and in fact, it was not manufactured by Liebenthal Bros. & Co. at Cleveland as represented by the label.

(4) On or about June 24, 1911, from the State of Ohio into the State of New York, of a quantity of Concord unfermented grape juice which was misbranded. This product was labeled: "Lake Shore Brand Ohio Concord Unfermented non-alcoholic Grape Juice Liebenthal Bros. & Co. Cleveland, Ohio. Guaranteed under the Food and Drugs Act June 30, 1906—Serial No. 124." Analysis of a sample of this product by said Bureau of Chemistry showed the following results: Reducing sugars as invert, 11.25 per cent; sucrose by Clerget, 0.60 per cent; polarization, direct, at  $20^\circ \text{C}$ .,  $-4.8^\circ \text{V}$ .; polarization, invert, at  $20^\circ \text{C}$ .,  $-5.6^\circ \text{V}$ .; ash, 0.19 per cent; alcohol (per cent by volume), 2.34; alcohol by qualitative test, present. Misbranding of the product was alleged in the fifth count of the information for the reasons: First, that the label as above set forth was

misleading, in that it would deceive the purchaser into the belief that the product was manufactured by Liebenthal Bros. & Co. at Cleveland, Ohio, whereas in truth and in fact it had not been manufactured by Liebenthal Bros. & Co. at Cleveland, Ohio; second, that the statement "Unfermented non-alcoholic" borne on the label was false and misleading, in that the product was not unfermented and non-alcoholic, but contained 2.34 per cent of alcohol by volume; and, third, that it was so labeled and branded as to deceive and mislead the purchaser, being labeled and branded "Concord Unfermented non-alcoholic Grape Juice," whereas in fact it was not unfermented non-alcoholic grape juice, but was a fermented alcoholic product containing 2.34 per cent of alcohol by volume.

(5) On or about October 12, 1911, from the State of Ohio into the State of New York, of a quantity of cognac type brandy which was misbranded. This product was labeled: "Trade Mark Lenora Fine American Cognac Type Brandy With Grain Distillate Special Notice To prevent imitations Lenora bottles are netted and corks branded Lenora." Analysis of a sample of the product by said Bureau of Chemistry showed the following results: Specific gravity (15.6°/15.6° C.), 0.94289; alcohol (per cent by volume), 46.12; methyl alcohol, none; solids (grams per 100 cc), 0.1779; ash (grams per 100 cc), 0.009; esters, fixed, as acetic (grams per 100,000 cc of 100 proof alcohol), 20.3; aldehydes, fixed, as acetic (grams per 100,000 cc of 100 proof alcohol), 1.2; caramel, present; acidity as acetic (grams per 100 cc), 0.0096; fusel oil, none. Misbranding of the product was alleged in the sixth count of the information for the reasons: First, that the word "Cognac" borne by the label was false and misleading, in that by the style and manner of display of said word upon the label and by the prominence with which said word appeared upon the label in comparison with the other words upon the label it would carry the impression to the purchaser that the product was a cognac and the product of a foreign country, whereas, in truth and in fact, it was not cognac and was of domestic manufacture; second, that the statement "Cognac Type Brandy" borne by the label was false and misleading, in that the product was not cognac type brandy, but was an imitation of cognac type brandy of domestic manufacture; third, that the product was an imitation cognac brandy and was offered for sale and sold under the distinctive name of another article, to wit, cognac; and, fourth, that the product was so labeled and branded as to deceive and mislead the purchaser, being labeled and branded "Lenora Fine American Cognac," whereas, in truth and in fact, it was not cognac, but was an imitation thereof, and the words "Type Brandy With Grain Distillate" were so inconspicuously placed on the label that they failed to correct the misleading impression conveyed by the words "Lenora Fine American Cognac."

(6) On or about May 11, 1911, from the State of Ohio into the State of Michigan, of a quantity of damiana which was misbranded. This product was labeled: "High Grade Damiana Harmless Color Exquisite Alcohol 11 per cent." Analysis of a sample of the product by said Bureau of Chemistry showed the following results: Alcohol by volume, 16.3 per cent; little or no damiana present. Misbranding of the product was alleged in the seventh count of the information for the reasons: First, that the statement borne on the label, to wit, "Alcohol 11 per cent," was false and misleading, in that it conveyed the impression that the product contained said amount of alcohol, when as a matter of fact it contained a greater amount of alcohol, 16.3 per cent, and second, that the statement "Damiana" borne on the label was false and misleading, in that it created the impression that the product contained a substantial amount of damiana, when as a matter of fact it contained insufficient material derived from damiana to warrant the use of said name. It was alleged in this count of the information that on December 2, 1911, said defendants entered a plea of guilty to a prior offense charged in the second count of cause No. 3492, and thereupon judgment of the court was entered and defendants were sentenced for the commission of said crime.

(7) On or about April 11, 1911, from the State of Ohio into the State of Nebraska, of a quantity of cordialized peach brandy which was adulterated and misbranded. This product was labeled; "Peach Brandy Cordialized Exquisite Fine Quality Fine Intoxicating Liquors Contents twenty-six oz. Alcohol thirty-one per cent." Analysis of a sample of this product by said Bureau of Chemistry showed the following results: Specific gravity, 15.6°/15.6° C., 1.0817; alcohol (per cent by volume), 30.30; solids (grams per 100 cc), 32.30; sucrose, by Clerget (grams per 100 cc), 11.34; reducing sugar as invert before inversion (grams per 100 cc), 20.41; polarization, direct, at 22° C., +4.8° V.; polarization, invert, at 22° C., -9.0° V.; ash (grams per 100 cc), 0.01; color, caramel; acidity (grams per 100,000 cc of 100 proof alcohol), 11.1; esters (grams per 100,000 cc of 100 proof alcohol), 29.7; aldehydes (grams per 100,000 cc of 100 proof alcohol), 5.2; fusel oil (Mitchell's method) (grams per 100,000 cc of 100 proof alcohol), 17.2. Adulteration of the product was alleged in the eighth count of the information for the reason that an imitation product, artificially colored and flavored, containing neutral spirits from a source other than the peach, had been substituted wholly or in part for the genuine article represented upon the label and brand as above set forth. Misbranding was alleged in the ninth count of the information for the reasons: First, that the statement "Peach Brandy cordialized" borne on the label was false and misleading, as it created the impression that the product was a cor-

dialized peach brandy, whereas in truth it was not, but was an imitation product, artificially colored and flavored, containing neutral spirits from a source other than the peach; and, second, that the product was labeled and branded so as to deceive and mislead the purchaser, in that it created the impression that the product was a cordialized peach brandy, whereas in truth it was not so, but was an imitation product, artificially colored and flavored, containing neutral spirits from a source other than the peach.

(8) On or about April 11, 1911, from the State of Ohio into the State of Nebraska, of a quantity of cordialized apricot brandy which was adulterated and misbranded. This product was labeled: "Apricot Brandy Cordialized Exquisite Quality Fine Intoxicating Liquors Contents twenty-six oz. Alcohol thirty-one per cent." Analysis of a sample of the product by said Bureau of Chemistry showed the following results: Specific gravity, 15.6°/15.6° C., 1.0766; alcohol (per cent by volume), 30.15; solids (grams per 100 cc), 30.58; sucrose, by Clerget (grams per 100 cc), 23.79; reducing sugar as invert before inversion (grams per 100 cc), 6.52; polarization, direct, at 22° C., +20.1° V.; polarization, invert, at 22° C., -9.0° V.; ash (grams per 100 cc), 0.01; color, probably Orange I; acidity (grams per 100,000 cc of 100 proof alcohol), 15.0; esters (grams per 100,000 cc of 100 proof alcohol), 61.9; aldehydes (grams per 100,000 cc of 100 proof alcohol), 2.8; fusel oil (Mitchell's method) (grams per 100,000 cc of 100 proof alcohol), 45.8. Adulteration of the product was alleged in the tenth count of the information for the reason that an imitation product, artificially colored and flavored, containing neutral spirits from a source other than the apricot, had been substituted wholly or in part for the genuine article represented upon the label and brand as above set forth. Misbranding was alleged in the eleventh count of the information for the reasons: First, that the statement "Apricot Brandy Cordialized" borne on the label was false and misleading, as it created the impression that the product was a cordialized apricot brandy, whereas in truth it was not so, but was an imitation product, artificially colored and flavored, containing neutral spirits from a source other than the apricot; and, second, that the product was labeled and branded so as to deceive and mislead the purchaser, in that it created the impression that it was a cordialized apricot brandy, whereas in truth it was not so, but an imitation product, artificially colored and flavored, containing neutral spirits from a source other than the apricot.

(9) On or about April 28, 1911, from the State of Ohio into the State of Nebraska, of a quantity of cordialized fig brandy which was adulterated and misbranded. This product was labeled: "Fig Brandy Cordialized Exquisite Quality Fine Intoxicating Liquors

Contents twenty-six oz. Alcohol thirty-one per cent." Analysis of samples of the product by said Bureau of Chemistry showed the following results: Specific gravity, 15.6°/15.6° C., 1.0811; alcohol (per cent by volume), 32.20; solids (grams per 100 cc), 32.11; sucrose, by Clerget (grams per 100 cc), 31.20; reducing sugar as invert before inversion (grams per 100 cc), 1.47; polarization, direct, at 22° C., +28.2° V.; polarization, invert, at 22° C., -9.8° V.; ash (grams per 100 cc), 0.01; acidity (grams per 100,000 cc of 100 proof alcohol), 8.7; esters (grams per 100,000 cc of 100 proof alcohol), 64.4; aldehydes (grams per 100,000 cc of 100 proof alcohol), 15.5; fusel oil (grams per 100,000 cc of 100 proof alcohol), 26.6. Adulteration of the product was alleged in the twelfth count of the information for the reason that an imitation product, artificially colored and flavored, containing neutral spirits from a source other than the fig, had been substituted wholly or in part for the genuine article represented upon the label and brand as above set forth. Misbranding was alleged in the thirteenth count of the information for the reasons: First, that the statement "Fig Brandy Cordialized" borne on the label was false and misleading, as it created the impression that said product was a cordialized fig brandy, whereas in truth it was not so, but was an imitation product, artificially colored and flavored, containing neutral spirits from a source other than the fig; and, second, that the product was labeled and branded so as to deceive and mislead the purchaser, in that it created the impression that the product was a cordialized fig brandy, whereas in truth it was not, but was an imitation product, artificially colored and flavored, containing neutral spirits from a source other than the fig.

(10) On or about December 12, 1911, from the State of Ohio into the State of Pennsylvania, of a quantity of wild cherry and pepsin flavored cordial which was adulterated and misbranded. This product was labeled: "The contents of this bottle is of delicate flavor and splendid body. (Picture of Indian Chief and ripe Cherries) Indian Chief. Wild Cherry and Pepsin, Flavored Cordial. Entirely healthful to the system, and of most excellent and delicious flavor. Indian Chief Wild Cherry and Pepsin possesses a very fragrant and agreeable flavor and taste characteristic of Wild Cherry and Pepsin of good quality. The fine aroma, mellowness and rich flavor sustains our 'Chief Brand' of Wild Cherry and Pepsin in its eminent reputation. Not only does this excellent cordial distinguish itself by its fine flavor and aromatic odor above others generally used, but at the same time is a healthful stimulant and appetizer. Unusual precaution is taken in the manufacture of this article, which is produced with a secret formula, owned by us with the result that our 'Chief' Brand Wild Cherry and Pepsin is now regarded as the

finest made by all users, Healthful and appetizing. Guaranteed under the National Pure Food Law, U. S. Serial No. 2521. Indian Chief Wild Cherry & Pepsin." (Rest of this side label above set forth is in German, and is a translation into German of the label above quoted.) Analysis of a sample of the product by said Bureau of Chemistry showed the following results: Alcohol (per cent by volume), 8.50; methyl alcohol, none; solids (wine method) (grams per 100 cc), 27.33; nonsugar solids (grams per 100 cc), 1.94; sucrose (grams per 100 cc), 0.45; reducing sugars as invert before inversion (grams per 100 cc), 24.94; polarization, at 20° C., direct,  $-6.4^{\circ}$  V., at 20° C., invert,  $-7.0^{\circ}$  V., at 87° C., invert, 0.0; ash, 0.26 per cent; acid, 1.50; active pepsin, none; benzaldehyde (grams per 100 cc), 0.04; test for coal-tar color, positive; the reactions of the color on wool correspond to those of Amaranth; total tartaric acid (grams per 100 cc), 0.79. Adulteration of the product was alleged in the fourteenth count of the information for the reason that it was colored in a manner to simulate a product of wild cherry and thereby and by means of said coloring matter the inferiority of the article was concealed, said article being a hydro-alcoholic preparation containing sugar, alcohol, benzaldehyde, and coloring matter, and not containing any wild cherry. Misbranding was alleged in the fifteenth count of the information for the reasons: First, that the statements and expressions borne upon the label as set forth above as follows, to wit, "Wild Cherry," "Wild Cherry \* \* \* Flavored" and "possesses a \* \* \* flavor and taste characteristic of Wild Cherry," together with the picture of cherries upon the label, were false and misleading, in that they would mislead and deceive the purchaser into the belief that the product contained wild cherry, when in truth it did not contain wild cherry; and, second, that the label and brand upon the package failed to bear a statement of the quantity or proportion of alcohol contained in the product, the amount of alcohol in said product being 8.50 per cent by volume.

On June 27, 1913, defendants entered pleas of nolo contendere to the information and the court imposed a fine of \$50 on each of the first, second, and third counts of the information, and \$40 on each of counts 6 to 15, inclusive, of the information, aggregating \$550, with costs. No penalty was adjudged as to the fourth and fifth counts of the information.

C. F. MARVIN,

*Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 10, 1913.*